

# STATE OF NEW YORK

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151

2023-2024 Regular Sessions

## IN ASSEMBLY

(Prefiled)

January 4, 2023

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Introduced by M. of A. CRUZ, GLICK, SIMON, JACKSON -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, the criminal procedure law and the executive law, in relation to prohibiting possession of reproductive or sexual health devices from being permitted in specified criminal or civil proceedings as evidence of prostitution

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "end criminalization of condoms act".  
2  
3 § 2. Legislative findings. The legislature hereby finds that promoting  
4 and protecting health and respecting and fulfilling human rights are  
5 necessarily linked, and that health-oriented and rights-based law  
6 enforcement efforts are central to the effective provision of government  
7 services for the benefit of the people of the state. Section 3 of article  
8 17 of the New York state constitution requires that the legislature  
9 protect and promote the health of the inhabitants of this state as a  
10 matter of public concern. Despite these provisions, for purposes of  
11 prosecuting certain criminal, civil and administrative offenses, reproductive  
12 and sexual health tools, including condoms, are currently being  
13 destroyed, confiscated, or used as evidence by law enforcement officers.  
14 This legislation is intended to strengthen the public health of all New  
15 Yorkers, including the most vulnerable, while preserving the ability of  
16 law enforcement to prosecute other crimes such as felony sexual  
17 offenses. The purpose of this act is to avoid the disparate impact of  
18 the practice of citing condoms and other reproductive and sexual health  
19 tools as evidence upon survivors of trafficking and people who are or  
20 are profiled as being engaged in the sex trades.  
21 § 3. The civil practice law and rules is amended by adding a new  
22 section 4519-b to read as follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 § 4519-b. Possession of reproductive or sexual health devices; receipt  
2 into evidence. 1. Evidence that a person was in possession of a condom  
3 or other reproductive or sexual health device may not be received in  
4 evidence in any trial, hearing or proceeding pursuant to subdivision one  
5 of section twelve and article ten of the multiple dwelling law, sections  
6 twelve-a and twenty-three hundred twenty of the public health law,  
7 section two hundred thirty-one of the real property law or subdivision  
8 five of section seven hundred eleven and section seven hundred fifteen  
9 of the real property actions and proceedings law, or by any law, local  
10 law or ordinance of a municipality or political subdivision of the  
11 state, or any word, rule, or regulation of any governmental instrumen-  
12 talinity authorized by law to adopt the same as evidence of conduct which  
13 would constitute an offense defined in article two hundred thirty of the  
14 penal law.

15 2. "Reproductive or sexual health device" shall include, but shall not  
16 be limited to, any contraceptive or other tool used to prevent unwanted  
17 pregnancy or the transmission of HIV or other sexually transmitted  
18 diseases, including but not limited to male condoms, female condoms,  
19 lubricants, pre-exposure prophylaxis (PrEP), post-exposure prophylaxis  
20 (PEP), HIV anti-retroviral medication, spermicide, hormonal methods,  
21 emergency contraception, diaphragm, cervical cap, or sponge.

22 § 4. Section 60.47 of the criminal procedure law, as amended by chap-  
23 ter 23 of the laws of 2021, is amended to read as follows:

24 § 60.47 Possession of condoms or other reproductive or sexual health  
25 device; receipt into evidence.

26 1. Evidence that a person was in possession of one or more condoms or  
27 other reproductive or sexual health device may not be admitted at any  
28 trial, hearing, or other proceeding in a prosecution for [~~section~~  
29 ~~230.00~~] any offense, or an attempt to commit any offense, defined in  
30 article two hundred thirty of the penal law, or section sixty-five  
31 hundred twelve of the education law, or any law, local law or ordinance  
32 of a municipality or political subdivision of the state, or any word,  
33 rule or regulation of any governmental instrumentality authorized by law  
34 to adopt the same, for the purpose of establishing probable cause for an  
35 arrest or proving any person's commission or attempted commission of  
36 such offense.

37 2. "Reproductive or sexual health device" shall include, but shall not  
38 be limited to, any contraceptive or other tool used to prevent unwanted  
39 pregnancy or the transmission of HIV or other sexually transmitted  
40 diseases, including but not limited to male condoms, female condoms,  
41 lubricants, pre-exposure prophylaxis (PrEP), post-exposure prophylaxis  
42 (PEP), HIV anti-retroviral medication, spermicide, hormonal methods,  
43 emergency contraception, diaphragm, cervical cap, or sponge.

44 § 5. Section 841 of the executive law is amended by adding a new  
45 subdivision 7-c to read as follows:

46 7-c. Take such steps as may be necessary to ensure that all police  
47 officers and peace officers certified pursuant to subdivision three of  
48 this section receive appropriate instruction regarding the evidentiary  
49 prohibition set forth in section 60.47 of the criminal procedure law and  
50 section forty-five hundred nineteen-b of the civil practice law and  
51 rules relating to the use of condoms and other reproductive or sexual  
52 health devices as evidence in certain trials, hearings or proceedings,  
53 or as a basis for probable cause for arrest, including that unauthorized  
54 seizure or confiscation of condoms and other reproductive or sexual  
55 health devices as a breach of public policy;

1 § 6. If any provision of this legislation or the application thereof  
2 to any person, circumstances, or political subdivision of this state is  
3 adjudged invalid by a court of competent jurisdiction such judgment  
4 shall not affect or impair the validity of the other provisions of the  
5 legislation or the application thereof to other political subdivisions  
6 of this state, persons, and circumstances.

7 § 7. This act shall take effect on the first of November next succeed-  
8 ing the date on which it shall have become a law.